

**Testimony in Support of HB 2607  
to the House Committee on Agriculture and Natural Resources  
by Kelsey Olson, Deputy Secretary  
Kansas Department of Agriculture  
February 1, 2024**

Good afternoon, Chairman Rahjes, and members of the committee. I am Kelsey Olson and I serve as Deputy Secretary at the Kansas Department of Agriculture. Thank you for the opportunity to present testimony in support of House Bill 2607.

The Kansas Department of Agriculture (KDA) is authorized to administer and enforce the laws applicable to pesticide use in Kansas, including the licensure of pesticide businesses and dealers, and the requirements associated with training and certification of pesticide applicators through the Kansas Pesticide Law. KDA maintains primacy for enforcement of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA) and the certification of pesticide applicators in the state. HB 2607 proposes updates to the current statutes in order to comply with the revised regulations implemented by the U.S. Environmental Protection Agency (EPA).

On January 4, 2017, EPA updated the Certification of Pesticide Applicators regulations to set stronger standards for those who apply restricted use pesticides (RUPs), which can only be used by certified pesticide applicators or individuals under a certified pesticide applicator's direct supervision and not by the general public. The key revisions to EPA's Certification of Pesticide Applicators Rule (EPA's 2017 Rule) include:

- Enhanced requirements for applicator education and safety.
- Required specialized certifications for people using specific application methods.
- Establishment of a nationwide minimum age for certified pesticide applicators who use or supervise the use of RUPs.
- Required mandatory training for uncertified applicators and recordkeeping requirements for training.

These standards are designed to protect the environment and human health, including the health of certified pesticide applicators and those under their direct supervision. All states, territories, tribes, and federal agencies which certify pesticide applicators who use RUPs are required by EPA's 2017 Rule to submit revised certification plans to EPA for approval by November 4, 2023. KDA submitted a revised certification plan to the EPA and the revised certification plan was approved in the fall of 2023.

HB 2607 addresses the areas in which Kansas' current statutes are insufficient in comparison to the EPA requirements. HB 2607 is a necessary step to ensure that Kansas law meets the requirements imposed by EPA and that KDA can maintain primacy for FIFRA enforcement and the certification of pesticide applicators in the state.

KDA currently has civil penalty authority over pesticide businesses if they are found in violation of a provision within the Kansas Pesticide Law. HB 2607 would extend that authority over any person or entity that is found in violation of the Kansas Pesticide Law. While the agency strives to ensure that certified pesticide applicators are adhering to the law, there have been situations in which a violation has occurred and the agency has been unable to pursue a civil penalty due to the limited civil penalty authority over only pesticide businesses.

Additionally, the bill enhances the certification requirements for certified private applicators. Certified private applicators will be required to pass a closed-book examination to certify their eligibility for purchase and use of RUPs. This bill also grants KDA the authority to establish requirements to allow certified private applicators to obtain initial certification through a training program in lieu of a written examination. Private applicator certification will continue to be effective for five years, at which time the certification may be renewed by completing the private applicator examination or by attending a recertification training program. Certified private applicators are still permitted to supervise an uncertified applicator using RUPs so long as the uncertified applicator is working under the direct supervision of the certified private applicator. The uncertified applicator shall be at least 18 years old unless the certified private applicator is a relative or family member, then the uncertified applicator shall be at least 16 years of age.

HB 2607 provides that certified applicators (both commercial and private applicators) must properly supervise uncertified applicators. It authorizes KDA to use rules and regulation authority to establish mandatory training requirements for those uncertified applicators and to require the documentation and maintenance of such training records.

Recordkeeping requirements are a key element to complying with EPA's 2017 Rule. Labeling requirements for RUPs have evolved significantly in recent years and now prescribe wind conditions, temperature limits, and even equipment specifications in order to appropriately apply RUPs. Recordkeeping is critical in the case that a complaint is made against a government agency, pesticide business or certified applicator. Many pesticide businesses and government agencies are already including the additional information in their recordkeeping documentation. KDA verifies pesticide application records to ensure pesticide applications are made in accordance with the pesticide products' labels and the Kansas Pesticide Law.

HB 2607 provides for additional categories of licensure and certification, including sodium cyanide predator control, aerial pest control and soil fumigation. One unique component to the bill pertains to the use of sodium cyanide for predator control. The state of Kansas currently has restrictions pertaining to the use of sodium cyanide; however, the EPA required the state to address the use of such pesticide products within the Kansas Pesticide Law. KDA worked with

other state agencies to ensure that the bill language is sufficient for those agencies while also addressing EPA's requirements.

In 2020, KDA pursued a bill (2020 HB 2463) that would have revised the existing requirements for pesticide businesses to provide proof of financial responsibility via liability insurance coverage. That bill also proposed removing the requirement that the agency complete a determination of "sufficient rehabilitation" before issuing a license or certification to an individual that has self-reported a prior felony conviction. KDA believes those revisions are still appropriate, so we have included those provisions from 2020 HB 2463 in this year's bill, HB 2607. 2020 HB 2463 passed the House 125-0 but was not taken up by the Senate before the Legislature adjourned due to COVID-19.

- With respect to proof of financial responsibility, KDA believes that requiring all pesticide business licensees to maintain liability insurance coverage will better serve the public and it will reduce the workload and verification requirements required by KDA staff. Currently, pesticide business licensees may provide proof of financial security in the form of a surety bond, liability insurance, letter of credit, or an escrow account. K.S.A. 2-2448 currently requires that the surety bond, letter of credit, and escrow account must provide for a minimum of \$6,000, compared to the current requirements of liability insurance where the minimums are \$25,000 for bodily injury and \$5,000 for property damage liability.
- KDA may deny, suspend, revoke or modify any license, registration, permit or certification issued under the Kansas Pesticide Law or the Kansas Chemigation Safety Act if an applicant has been convicted of a felony and the Secretary of Agriculture determines that such applicant "has not been sufficiently rehabilitated to warrant the public trust." This places KDA staff in the uncomfortable position of conducting an investigation and attempting to determine the appropriate standard for determining the meaning of "sufficiently rehabilitated to warrant the public trust." KDA does not have statutory authority to conduct background checks, so KDA's investigative process only occurs when an applicant self-reports a felony conviction on their application. This investigative process requires the applicant to submit extensive documentation of their conviction and their subsequent "rehabilitation" which then requires considerable review by KDA staff. Not only does this requirement put KDA in a difficult position, but it also makes these job fields less accessible to some possibly deserving candidates. These revisions included in HB 2607 will allow KDA to protect the public when there are violations of state and federal laws related to the application of pesticides and the operation of chemigation systems, while not negatively impacting applicants with prior felony convictions.

The revisions proposed in HB 2607 will ensure that the Kansas Pesticide Law meets the standards required by EPA for certified applicators and the law is consistent with the revised certification plan approved by EPA. Accordingly, KDA will be able to maintain primacy for FIFRA enforcement

and the certification of pesticide applicators in the state. Thank you for the opportunity to present testimony on HB 2607, I encourage you to support this bill.